

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. LCR TELECOMMUNICATIONS, L.L.C., Respondent.	DOCKET NO. FCU-02-26 (C-02-322)
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**ORDER DENYING PETITION FOR PROCEEDING
TO IMPOSE CIVIL PENALTIES**

(Issued June 24, 2003)

On December 16, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to impose civil penalties pursuant to Iowa Code § 476.103, asking that the Board review the proposed resolution issued in C-02-322, involving LCR Telecommunications, L.L.C. (LCR), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings, which are a part of the record in this proceeding pursuant to 199 IAC 6.7, the events to date can be summarized as follows:

By letter dated September 20, 2002, Dr. Jerry P. Gibson, O.D., of Vinton, Iowa, filed a complaint with the Board for an unauthorized change in his long distance service in violation of Iowa's anti-slamming law, Iowa Code § 476.103. Dr. Gibson named AT&T Communications of the Midwest (AT&T), Qwest Corporation (Qwest), OneStar Communications, L.L.C. (OneStar), Alliance Group Services, Inc. (Alliance), and LCR Telecommunications, L.L.C. (LCR), as the companies potentially involved in the slam. Board staff identified the matter as C-02-322 and, pursuant to Board rules, on September 24, 2002, forwarded the complaint to AT&T, Qwest, and OneStar for responses.

On September 24, 2002, Qwest responded to Dr. Gibson's complaint. Qwest states that its records indicate that Dr. Gibson's long distance carrier, OneStar, was changed by Alliance on July 30, 2002.

AT&T responded to Dr. Gibson's complaint on October 2, 2002. AT&T stated that its records indicate an order was placed with the local telephone company, Qwest, by another long distance carrier and that AT&T did not initiate any change in Dr. Gibson's carriers.

OneStar responded to the complaint on October 9, 2002. OneStar acknowledges that it is the preferred long distance service provider for Dr. Gibson. OneStar stated that its records indicate that on July 30, 2002, OneStar was notified that it had been canceled as the preferred carrier for Dr. Gibson due to a subsequent order submitted by a different provider.

On October 8, 2002, Board staff forwarded Dr. Gibson's complaint to Alliance for response. Alliance responded to the complaint on October 15, 2002, stating that the preferred carrier change order for Dr. Gibson's account was ordered at the direction of LCR. Alliance stated that it provides underlying transmission capacity to LCR, but is in no way involved with LCR's marketing or sales.

On October 23, 2002, Board staff forwarded Dr. Gibson's complaint to LCR for response. LCR responded to the complaint on November 13, 2002, stating that it received authorization for the switch from Dr. Gibson's office manager, Jodi Plower, on July 19, 2002. LCR included a copy of the third-party verification recording with its response. LCR further indicated that Dr. Gibson's account was issued a credit of \$27.72 on November 4, 2002, and was canceled out of its system on October 28, 2002.

On November 15, 2002, Board staff forwarded a copy of the third-party verification to the customer, asking the customer to review the tape and respond in writing by November 26, 2002. Dr. Gibson responded to the tape by letter dated November 27, 2002, stating that Ms. Plower did receive a phone call from LCR on July 19, 2002, but that she was assured that no transfer of service would occur without Dr. Gibson's authorization. Dr. Gibson further stated that Ms. Plower was not allowed to make a decision regarding a change in telephone service providers without his authorization.

On December 6, 2002, Board staff issued a proposed resolution describing these events and proposing that the credit offered by LCR and the reassessment of the change in carrier charges by Qwest to LCR, represented a fair resolution of the situation. No party other than Consumer Advocate has challenged the staff's proposed resolution.

Consumer Advocate argues that with respect to the customer's long distance service, LCR violated Iowa Code § 476.103 by switching Dr. Gibson's long distance service from OneStar to LCR without first obtaining the proper authorization and that, as a result of this violation, a civil penalty should be imposed against LCR.

The Board will deny the request for formal proceedings. Iowa Code § 476.3 requires that the Board grant a request to initiate a formal proceeding if there is any reasonable ground for investigating the complaint. Consumer Advocate has not offered any reasonable ground for further investigation of this matter. The request for formal proceeding fails to address the proposed resolution or to request, or even suggest, any specific remedy beyond what has already been done. In the absence of any such request, there is no basis for further investigation of this matter.

The customer's failure to challenge the proposed resolution indicates that the customer is satisfied with the resolution and does not wish to pursue this matter further. Consumer Advocate has not identified any reason to disturb those wishes.

IT IS THEREFORE ORDERED:

The "Petition For Proceeding To Impose Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on December 16, 2002, is denied.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 24th day of June, 2003.